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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,416	07/11/2002	Thomas G. Topolski	TOP01 P-100	9321

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EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 07/11/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/064,416

Applicant(s)

TOPOLSKI, THOMAS G.

Examiner

Kurt Fernstrom

Art Unit

3712

-- *Th MAILING DATE of this communication appears on the cover sheet with the correspond nce address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.                      6) ☐ Other: .

Art Unit: 3712

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "said flotation mass" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Hamblin. Hamblin discloses in Figures 2-4 and in column 1, line 71 to column 2, line 37 and column 3, lines 24-73 of the specification a swim stroke training apparatus comprising a forearm paddle 10 adapted to be connected with a swimmer's forearm, including a fin comprised of web elements 60 extending

Art Unit: 3712

between ribs 36 and 37, best shown in Figure 2. The structure of the fin promotes downward motion, in that it converts generally forward motion into a generally downward force.

5. Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by Lerro. Lerro discloses in Figures 1, 4 and 9 and in column 5, lines 30-59 a swim stroke training apparatus comprising a bicep/tricep float 103 which is adapted to be connected to a swimmer's arm, and which has a surface adapted to facilitate gliding through the water, whereby the float promotes an elevated elbow.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-9, 14-24, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin. Lerro discloses in Figures 1, 4, 5 and 9 and in column 5, lines 30-59 a swim stroke training apparatus comprising a bicep/tricep float 103 which is adapted to be connected to a swimmer's arm, and which has a surface adapted to facilitate gliding through the water, whereby the float promotes an elevated elbow, and a paddle 104 which is attached to the forearm. Lerro fails to disclose that the forearm paddle is configured so as to

Art Unit: 3712

promote downward motion of the hand and forearm. Hamblin discloses in Figures 2-4 and in column 1, line 71 to column 2, line 37 and column 3, lines 24-73 of the specification a swim stroke training apparatus comprising a forearm paddle 10 adapted to be connected with a swimmer's forearm, including a fin comprised of web elements 60 extending between ribs 36 and 37, best shown in Figure 2. The structure of the fin promotes downward motion, in that it converts generally forward motion into a generally downward force. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a paddle having a fin extending downwardly of the type disclosed by Hamblin for the purpose of promoting downward motion of the hand and forearm during a swim stroke. With respect to claims 3, 17 and 18, the horizontal portion of the web which extends between the ribs 16 (see Fig. 2) is considered to be a "throat", in that it connects the fin to the wrist support plate 11. With respect to claims 4 and 19, Hamblin discloses a forearm portion 11 and a hand portion (the web which extends between ribs 16) to limit wrist movement. With respect to claims 5-7 and 20-22, Hamblin further discloses a stabilizer 23 which extends laterally and is gripped by the hand during use. With respect to claims 8, 8, 23 and 24, Hamblin further discloses a strap 25 which connects the paddle to the forearm. With respect to claims 14, 15, 29 and 30, Lerro discloses in Figure 1 the use of a pair of the paddle and float devices; one for each hand and arm respectively.

8. Claims 10, 11, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin, and further in view of Lillo. Lerro as viewed in combination with

Art Unit: 3712

Hamblin discloses all of the limitations of the claims with the exception of the strap connector connecting the float device to the arm. Lillo discloses in Figures 4-6 and in column 4, lines 12-36 40 to column 5, line 25 a swimming aid device comprising a float 22 which is connected to the swimmer's arm via straps 26 and 28 connect the arcuate portions to each other. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a flotation mass in two arcuate portions connected together by a strap for the purpose of allowing the user to more easily attach the device to and remove the device from the arm portion of the swimmer.

9. Claims 12, 13, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerro in view of Hamblin, and further in view of Brom. Lerro as viewed in combination with Hamblin discloses all of the limitations of the claims with the exception of the flotation mass comprising two arcuate portions. Brom discloses in Figures 2 and 5 and in column 4, line 40 to column 5, line 25 a swimming aid device comprising two arcuate portions 22 and 23 which are connected to the swimmer's arm wherein straps 33 and 34 connect the arcuate portions to each other. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Lerro as viewed in combination with Hamblin by providing a flotation mass in two arcuate portions connected together by a strap for the purpose of allowing the device to more easily conform to the arm portion of the swimmer. While Brom discloses a paddle attached to the arm, rather than a float, it is considered to be analogous art because both are directed to devices which are attached to a swimmer's arm to aid in training the swimmer. Also, the purpose of the

Art Unit: 3712

two portions, to allow for conforming to a swimmer's arm, is not an advantage which would be restricted to paddles, but rather is equally useful to both types of devices.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schlueter, Griffith, Caplan, O'Sullivan, Dilger, Solloway, Robertson and Rudy disclose various swimming aids.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

*Kurt Fet*  
*Kurt Fernstrom*

July 8, 2003